

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Luis Cueto,)	C/A No. 5:11-2308-TLW-PJG
)	
Plaintiff,)	
)	
v.)	
)	REPORT AND RECOMMENDATION
Orangeburg Department of Public Safety,)	
)	
Defendant.)	
_____)	

The plaintiff, Luis Cueto, filed this action alleging violation of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §§ 12101, et seq., and a state law defamation claim against his former employer, the Orangeburg Department of Public Safety. This matter is before the court pursuant to 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) DSC for a Report and Recommendation on the defendant’s motion to dismiss the plaintiff’s state law claim (ECF No. 24) and the defendant’s motion for summary judgment (ECF No. 29). The plaintiff did not file a response in opposition to either of the defendant’s motions.¹

¹ The court issued an order on October 17, 2012, advising the plaintiff that it appeared to the court that he was not opposing the defendant’s motion for summary judgment and wished to abandon this action, and gave the plaintiff an additional seven days in which to file his response. (ECF No. 33.) The plaintiff was specifically warned that if he failed to respond, this action may be decided on the record presented in support of the defendant’s motion, see Local Civil Rule 7.06 DSC, or may be recommended for dismissal with prejudice for failure to prosecute. See Davis v. Williams, 588 F.2d 69, 70 (4th Cir. 1978); Fed. R. Civ. P. 41(b). Despite this warning, the plaintiff still did not respond.

Having carefully reviewed the defendant's submissions in support of its motions, the court concludes for the reasons stated therein that the plaintiff's claims all fail as a matter of law and therefore recommends that the defendant's motions be granted.


Paige J. Gossett
UNITED STATES MAGISTRATE JUDGE

November 5, 2012
Columbia, South Carolina

The parties' attention is directed to the important notice on the next page.

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
901 Richland Street
Columbia, South Carolina 29201

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).